



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:

WAGNER, ET AL.

Serial No.: 09/113,446

Filed: 07/10/1998

For: **HOUSING FOR PORTABLE  
HANDHELD ELECTRONIC DEVICE**

Art Unit: 3624

Examiner: G. ANDERSON

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APPEAL BRIEF

Honorable Commissioner  
for Patents  
Washington, D.C. 20231

Attention: Board of Patent Appeals and Interferences

Further to the Notice of Appeal filed on November 22, 2000 in connection with the above-referenced application, Appellant hereby submits its Appeal Brief pursuant to 37 C.F.R. § 1.192. The fee required under 37 C.F.R. § 1.17(f) is submitted concurrently herewith. Additionally, Applicant hereby petitions for a two-month extension of time in which to file the Appeal Brief and submits the required fee under 37 C.F.R. § 1.17(a)(2).

03/30/2001 RHARIS1 00000033 09113446

01 FC:120 310.00 OP  
02 FC:116 390.00 OP

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### **1. REAL PARTY IN INTEREST**

The real party in interest is the Assignee of the subject application, Allflex USA, Inc.

### **2. RELATED APPEALS AND INTERFERENCES**

There are no appeals or interferences known to Appellant which will directly affect or be directly affected by or have a bearing on the Board's decision in this Appeal.

### **3. STATUS OF CLAIMS**

The subject application was filed on July 10, 1998 with thirteen claims. Claims 1-5 were withdrawn from consideration in response to a restriction requirement and were subsequently cancelled. Claim 6, the only remaining independent claim, was amended once and claims 12-13 were cancelled. Applicant appeals the final rejection of claims 6-11.

### **4. STATUS OF AMENDMENTS**

There are no outstanding amendments subsequent to a final rejection in this case.

### **5. SUMMARY OF THE INVENTION**

As described at page 4, line 8 through page 5, line 18 of the specification and as illustrated in Figures 1-3, the invention defined by the claims on appeal is a housing for a hand-held electronic reader/scanner (10), such as one that may be used to interrogate and record information from animal identification tags. The housing has a one-piece, hollow body portion (12) made of a thermoplastic elastomer to enclose the electronics of the reader/scanner and provide a handle for holding the device. The body portion has an aperture opening into the electronics enclosure to accommodate an antenna coil. A substantially planar scan face (18), also made of the thermoplastic elastomer, is adapted to cover the aperture. A tongue-and-groove sealing arrangement (40, 42) is utilized around the perimeter of the aperture.

## **6. ISSUES**

The following issues are presented on appeal:

Is the subject matter of claims 6-8 unpatentable under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,796,091 to Schmidt, et al.?

Is the subject matter of claims 9-10 unpatentable under 35 U.S.C. § 103 as obvious in light of Schmidt in combination with U.S. Patent No. 4,758,712 to Matone, Jr., et al.?

Is the subject matter of claim 11 unpatentable under 35 U.S.C. § 103 as obvious in light of Schmidt in combination with U.S. Patent No. 5,368,380 to Mottmiller, et al.?

## **7. GROUPING OF CLAIMS**

The claims of the application are grouped in accordance with the grounds for rejection, i.e.:

Group 1	Claims 6-8
Group 2	Claims 9-10
Group 3	Claim 11

## **8. ARGUMENT**

### **SUMMARY OF THE PRIOR ART**

Schmidt discloses a hand-held bar code reader that is similar in overall appearance to the housing of the present invention. In Schmidt, "the hand-supportable housing is realized as a five-piece split-housing construction". Col. 13, lines 54-55. Schmidt does not disclose mechanical details of the manner in which the five pieces of the housing are joined together.

Matone discloses a protective keyboard enclosure assembly comprising a cover for a conventional keyboard. A seal or gasket is mounted on the perimeter of a lower section of the enclosure assembly and engages an upper section of the assembly to protect the keyboard from particulate contaminants.

Mottmiller discloses a cabinet assembly comprising a plurality of molded plastic panels. Some of the panels include grooves formed to have an inwardly projecting shoulder, which enters into a corresponding indentation in side flanges of adjoining panels.

#### **CLAIMS 6-8**

Claims 6-8 have been finally rejected under 35 U.S.C. § 102(b) as being anticipated by Schmidt. It is well established that anticipation requires the presence in a single prior art disclosure of each and every element of the claimed invention. See, e.g., *In re Paulsen*, 31 USPQ2d 1671 (CAFC 1994). Every claim limitation must identically appear in a single reference. *Gechter v. Davidson*, 43 USPQ2d 1030 (CAFC 1997). The reference must show exactly what is claimed. *Titanium Metals Corporation of America v. Banner*, 227 USPQ 773 (CAFC 1985). If the claimed invention differs from the prior art reference, anticipation is not shown even if the differences are insubstantial and missing elements could be supplied by one skilled in the art. *Structural Rubber Products Company v. Park Rubber Company, et al.*, 223 USPQ 1264 (CAFC 1984).

In the present case, independent claim 6, and by incorporation, all of the dependent claims, expressly require a “one-piece, hollow body portion”. Page 4, lines 10-12 of the Specification states that: “Body portion 12 is made as a single part rather than as two joined halves. This eliminates the need for bonding or otherwise joining two halves and also eliminates the presence of an unattractive seamline.” Moreover, *Webster’s New Collegiate Dictionary* defines the term “one-piece” to mean “consisting of or made in a single undivided piece”. As noted above, the Schmidt reference specifically discloses that the housing has a five-piece split-housing construction. The

Examiner contends that the housing of Schmidt “is defined with reference to Figure 1, in column 11 as the head portion continuously extends into contoured handle. Therefore the hollow body is a single piece.” Applicant respectfully disagrees. Figures 1A through 3B all illustrate the same housing of the Schmidt device (see column 9, lines 61, et seq.). With particular reference to Figures 3A and 3B, Schmidt states: “In the illustrative embodiment, the hand-supportable housing is realized as a five-piece split-housing construction comprising: a first housing portion 9C...; a second housing half 9D...; a battery cover 9E...; a housing end cap 9F...; and a housing bumper 9G...” (Column 13, lines 48-67.) Schmidt clearly does not disclose a one-piece hollow body portion (note also that the joints between the five pieces are clearly shown in each of Figures 1A-1G).

In view of the fact that Schmidt fails to disclose each and every element of the claimed invention, the rejection of claims 6-8 under 35 U.S.C. § 102(b) should be reversed.

#### **CLAIMS 9-10**

Claims 9-10 have been finally rejected under 35 U.S.C. § 103 as obvious in light of Schmidt combined with Matone. As discussed in the preceding section, Schmidt fails to disclose a housing with a one-piece hollow body portion. There is no teaching or suggestion in either Schmidt or Matone to construct a housing for a hand-held electronic device in this manner. Absent any such teaching or suggestion in the cited references, the rejection under 35 U.S.C. § 103 is inappropriate and should be reversed.

#### **CLAIM 11**

Claim 11 has been finally rejected under 35 U.S.C. § 103 as obvious in light of Schmidt combined with Mottmiller. As with the combination of Schmidt and Matone, the combined disclosures of Schmidt and Mottmiller fail to teach or suggest a housing for a hand-held electronic

device having a one-piece, hollow body portion. Thus, the rejection of claim 11 under 35 U.S.C. § 103 is inappropriate and should be reversed.

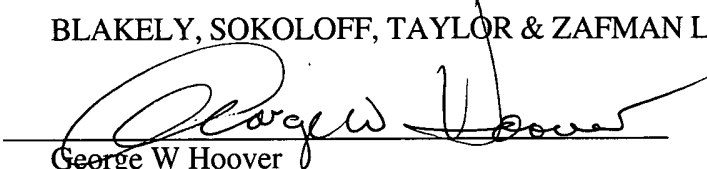
## 9. CONCLUSION

Based on the foregoing, Applicant submits that claims 6-11 define patentable subject matter and respectfully requests that the Examiner's final rejection of these claims be reversed.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

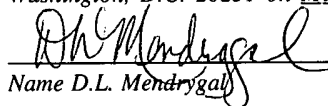
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### **CERTIFICATE OF MAILING:**

*I hereby certify that this correspondence is being deposited in triplicate with the United States Postal Service as first class mail in an envelope addressed to: Honorable Commissioner for Patents, Washington, D.C. 20231 on March 22, 2001.*

  
Name D.L. Mendrygal  
Date March 22, 2001

**APPENDIX**  
**TEXT OF CLAIMS PRESENTED ON APPEAL**

6. A housing for a portable handheld electronic reader/scanner comprising:  
a one-piece, hollow body portion made of a thermoplastic elastomer having an electronics enclosure portion and a handle portion, said electronics enclosure portion having an aperture entirely surrounded by a body perimeter portion;  
a substantially planar scan face made of the thermoplastic elastomer adapted to cover said aperture, said scan face entirely surrounded by a scan face perimeter portion;  
one of the body perimeter portion and scan face perimeter portion having a groove and the other having a projecting tongue element for mating engagement with the groove.
7. The housing of claim 6 further comprising an end cap coupled to the handle portion.
8. The housing of claim 6 wherein the handle portion comprises a battery compartment.
9. The housing of claim 6 further comprising a gasket disposed around the tongue element.
10. The housing of claim 7 further comprising a gasket disposed around the end cap.
11. The housing of claim 6 wherein the tongue portion has a substantially "T"-shaped cross section.